



**Sankei v Gwako & 26 others (Environment and Land Case
78 of 2017) [2025] KEELC 5317 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 5317 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE 78 OF 2017**

MN KULLOW, J

APRIL 7, 2025

BETWEEN

JORAM OLE SANKEI PLAINTIFF

AND

ESTHER MORAA GWAKO & 26 OTHERS DEFENDANT

JUDGMENT

1. By a plaint dated 1st September 2014, the Plaintiff avers that he is the registered proprietor of Narok / CIS –Mara/lemek/138. He claims that the defendants are in illegal occupation of 200 acres of the parcel and seeks judgement against them for;
 - a. An eviction order be issued to remove all the Defendants, their agents, their servants, their families, their structures, their buildings and all other belongings from Narok /CIS –Mara/lemek/138 and for vacant possession thereof to the plaintiff with particular emphasis on the 200 acres of land currently occupied by the Defendants albeit wrongfully and illegally.
 - b. A permanent order of injunction restraining the Defendants by themselves, their agents and servants and family members from entering, remaining into, using, dealing with or any manner howsoever from interfering with the Plaintiff’s parcel of land known as Narok /CIS –Mara/lemek/138 with particular emphasis on the 200 acres of land compromised therein.
 - c. The defendants to pay the costs of this suit to the Plaintiff in any event.
2. In opposition to the suit, the defendants filed a further amended statement of defence and counterclaim dated 28th October 2020.They contended that they purchased 400 acres out of the plaintiff’s parcel known as Narok /CIS –Mara/lemek/138 approximately measuring 2500 acres vide an agreement for sale dated 18th September 1987 pursuant to which they took possession. They claim that they are entitled to the said 400 acres by virtue of adverse possession and counterclaim for orders;



- a. A declaration that the Plaintiff's right to recover the portion of land comprised in the land parcel of land Title Number Narok /CIS –Mara/lemek/138 approximately measuring 400 acres is barred under the *limitation of Actions Act*, Chapter 22 of Laws of Kenya, and his title/claim thereto extinguished on the grounds that the counterclaimants) have openly, peacefully and continuously been in occupation and possession of the aforesaid portion of land for a period exceeding 33 years.
 - b. There be an order that the counterclaimants be registered as the proprietor of portion of Title Number Title Number Narok /CIS –Mara/lemek/138 approximately measuring 400 acres in place of the plaintiff.
 - c. The Deputy Registrar be directed and /or ordered to execute the transfer instruments and all attendant documents to facilitate the subdivision, transfer and registration of land parcel Title Number Narok /CIS –Mara/lemek/138 approximately measuring 400 acres in favour of counterclaimants, in the event of default by the Plaintiff to execute the necessary transfer and completion instruments.
 - d. There be an order of permanent injunction restraining the plaintiff either by himself, agents, servants and/or employees from interfering with the counterclaimant's peaceful possession and occupation of the land parcel title number Narok /CIS–Mara/lemek/138 approximately measuring 400 acres in any manner whatsoever and/or howsoever.
 - e. A refund of the sum of ksh.2, 160, 000/- being the purchase price together with interest at court rates from the date of the signing of the agreement until payment in full together General and Exemplary damages for breach of contract.
 - f. Costs of the case and counterclaim.
3. The plaintiff filed a defence to counterclaim dated 27th January 2021 denying allegations levelled against him by the defendant in his counterclaim.
 4. The matter proceeded for hearing where each party called one witness.

Evidence of the plaintiff

5. PW1, was Paul Keiliken Sankei ,the plaintiff's son. He testified on the Plaintiff's behalf pursuant to a Power of Attorney dated 9th October 2020.He adopted his witness statement dated 20th December 2019 as his evidence in chief and produced documents listed in the plaintiff's list dated 10th December 2019 as Exhibits.
6. He testified that the plaintiff entered into a sale agreement dated 18th September 1987 with Soka Women Group for sale of 400 acres excised out of Number Narok /CIS –Mara/lemek/138 at a consideration of Ksh. 2,160,000/= out of which the vendor(Plaintiff) received ksh.214,000/= through Duncan Commercial Agencies who were the purchaser's agents and where the original title was surrendered for safekeeping until the entire consideration was paid.
7. It was his testimony that Duncan Commercial Agencies in the presence of Soga officials group agreed with the Plaintiff that the balance of the purchase price be paid to the Plaintiff directly and in that regard, the Plaintiff was only paid a sum of ksh.459, 000/- only on various dates between 1988 and 1989 then the Defendants reneged on honouring their undertaking.
8. He averred that Soka women group sued the Plaintiff in Narok Resident Magistrate's Court vide Civil Case No.31 of 2003 and in the year 2004 they withdrew the case without notifying him. He stated that



in 2015, they held a meeting with Soka Women Group in the presence of the Area Chief accompanied by the Senior Sargent Administration Police officer in the location where the defendants agreed that they have no interest in the suit land.

9. He also contended that between 1991 and 2019, the Soka Women Group placed a caution on the suit title which has undermined the Plaintiff's right to freely utilize the land.
10. He testified that the Defendants did not pay the plaintiff a balance of ksh.480, 000/= and that to date, the sale has never been concluded.
11. During cross-examination, PW1 confirmed that the Defendants entered the land and have been ploughing it.

Evidence of the defendants

12. The 1st defendant was the Defendant's sole witness and is the Chairlady of Soka Women Group. Her witness statements dated 13th October 2015 and 28th October 2020 were adopted as her evidence in chief.
13. She produced documents contained in the Defendant's list of documents dated 9th December 2019 as the Defendants exhibits. They include a sale agreement dated 18th September 1987, copy of order issued in Nakuru HCCA No.29 of 2021 and in Narok CMCC No.32 of 2003, letters dated 22.3.2013 ,28.2.2015 and 21.1.2016, A copy of resolution by Soko Women Group, Registration Certificate of Soko Women group and a bundle of receipts.
14. She averred that after the Defendants had entered into an agreement for sale dated 18th September 1987 with the plaintiff, they paid the purchase price in full and thereafter took possession of 400 acres hived from the Plaintiff's parcel and have occupied it exclusively and openly for a period of 33 years.
15. She testified that the Plaintiff breached his obligations under the sale agreement between him and the Defendants by declining to obtain Land Control Board consent to subdivide the suit land and transfer a 400 acre portion in the Defendants' favour thus the transaction became void pursuant to Section 6 of the *Land Control Act*.
16. She claimed that the Defendants have overtime acquired overriding interests in the 400 acres that they have been and continue to occupy openly, exclusively and uninterrupted adding that they have constructed houses, planted trees, made the land arable by clearing the bushes and fenced it with consent of the plaintiff.
17. During cross-examination, DW1 insisted that the Defendants are still on the suit land and they have fenced it with an electric fence. She also claimed that the Defendants paid the plaintiff the entire consideration through Duncan Commercial Agencies and made other payments directly to the plaintiff who received it but he refused to allow them to get the land control board consents.

Submissions

18. The suit was canvassed vide written submissions. The plaintiff's submissions are dated 5th October 2021. He contended that since the suit parcel is agricultural land, consent from the Land Control Board ought to have been sought and obtained but it was not due to the defendant's failure to pay full consideration. He argued that the transaction between him and the Defendants should be declared void under Section 6 (1) of the *Land Control Act*. To this end, the case of Leonard Njonjo Kariuki v Njoroge Kariuki alias Benson Njonjo C.A No.26 of 1979 as well as the case of David Sironga Ole Tukai v Francis Arap Muge & 3 others C.A Civil Appeal No.76 of 2014 was relied upon.



19. The case of *Kim Pavey & 2 others v Loise Wambui Njoroge & another v Loise Wambui Njoroge & another* [2011] eKLR was cited to submit that the Defendants did not adduce evidence to support their claim for adverse possession.
20. It was also argued that the defendant could not purport to claim the suit property by adverse possession while there was a contract between the parties. The case of *Wambugu v Kamau Njuguna* [1983] eKLR was cited to buttress the point.
21. It was also submitted that the Defendants' counterclaim for a refund of ksh.2,160,000/= together with interest is time barred under Section 4 (1) (a) of the *Limitation of Actions Act* as it is an action based on contract.
22. On their part, the Defendants filed submissions dated 5th October 2021. They submitted that they paid the entire purchase price with the last payment having been done on 14th October 1990.
23. The defendants also contended that they had acquired 400 acres out of the suit parcel by way of adverse possession pursuant to Section 7,13,37 and 38 of the *Limitation of Actions Act*. To this end, the case of *Teresa Wachuka Gachira v Joseph Mwangi Gachira* [2009] eKLR was relied upon.
24. It was also submitted that since the transaction between the Defendants and the Plaintiff became void within 6 months after the agreement was entered between them on 18th September 1987 pursuant to Section 6 as read with Section 8 of the *Land Control Act*, the time for adverse possession started running the moment the transaction was voided. The case of *Public Trustee and Beatrice Muthoni v Kamau Wanduru CA 73 of 1982* was relied upon.
25. Relying on the case of *Tureti Obra v Peter Koipeitai Nengisoi* [2014] eKLR, the Defendants submitted that they are entitled to the alternative prayer of a refund since where an action is based on fraud, the period of limitation does not begin to run until the fraud has been discovered. They argued that they discovered the plaintiff was out to defraud them in the year 2020 and subsequently sought leave to amend their defence and counterclaim and seek a refund of the money they paid the plaintiff.

Issues

- a. What is the fate of the sale agreement dated 18th September 1987 between the Plaintiff and the Defendants?
- b. Whether the Plaintiff is entitled to a refund of the purchase price paid.
- c. Whether the Plaintiff is entitled to 400 acres hived out of the suit parcel by adverse possession.

Analysis

26. It is not disputed that the Plaintiff is the registered proprietor of the parcel of land known as Number Narok /CIS –Mara/lemek/138. The parties do not dispute that on 18th September 1987, the plaintiff entered into a sale agreement with Soka Women Group (Mwongori) in which he sold 400 acres hived off the suit parcel to the Defendants at a consideration of ksh.2,160,000/=.
27. The Plaintiff now claims that the Defendants are in occupation of 200 acres of the suit parcel illegally since their sale agreement was voided by operation of law and for the reason that the Defendants did not pay him the entire consideration.
28. The defendants contend that they have become entitled to 400 acres of the suit parcel by adverse possession since they have been in open uninterrupted occupation since 1987. They registered a caution on the title to the suit parcel on 14th May 1991.



29. Since no consent was obtained, the agreement of the parties dated 18th September 1987 became null and void after 6 months, pursuant to Section 8(1) of the Land Control Act, it cannot be enforced. However, Section 7 of the Land Control Act provides a remedy that as refund is recoverable as a debt following such voidable transactions. The defendants sought this prayer in the alternative.
30. The Defendants also sought an order of adverse possession. Adverse possession is governed by provisions contained in Sections 7,37 and 38 of The Limitation of Actions Act. In *Mate Gitabi v Jane Kabubu Muga Alias Jane Kaburu Muga & 3 Others* [2017] eKLR, it was stated:
- “For one to succeed in a claim for adverse possession one must prove and demonstrate that he has occupied the land openly, that is without secrecy, without force, and without license or permission of the land owner, with the intention to have the land. There must be an apparent dispossession of the land from the land owner. These elements are contained in the Latin maxim *nec vi, nec clam, nec precario*”
31. From the evidence of DW1, the defendant’s entry into the suit land was permissive, it was not non-consensual. They entered the land pursuant to the sale agreement dated 18th September 1987, which agreement is not disputed but has been voided.
32. DW1 led evidence that their possession of the suit land and the activities they undertook including ploughing and fencing was permitted by the Plaintiff. Having failed to prove the elements of adverse possession, the prayer for adverse possession falls.
33. In the circumstances, the plaint is merited while the Defendants’ counterclaim partially succeeds as their prayer for a refund in is allowed in the following terms;
- A. An eviction order be and is hereby issued to remove all the Defendants, their agents, their servants, their families, their structures, their buildings and all other belongings from the portion they occupy on Narok /CIS –Mara/lemek/138.
- B. A permanent order of injunction is hereby issued restraining the Defendants by themselves, their agents and servants and family members from entering, remaining into, using, dealing with or any manner howsoever from interfering with the Plaintiff’s parcel of land known as Narok /CIS –Mara/lemek/138/.

C. Costs to be borne by the Defendants.

34. As pertains the counterclaim, the court finds as follows;
- A. An order be and is hereby issued directing the Plaintiff to refund the sum of ksh.2, 160, 000/- within 60 days, being the purchase price paid by the Defendants together with interest at court rates from the date of the signing of the sale agreement dated 18th September 1987 until payment in full.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF APRIL 2025

MOHAMMED N. KULLOW

JUDGE

In presence of:

Mr. Lelei for the Plaintiff



No Appearance for the Defendant

Philomena M. (Court Assistant)

